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EXPRESS MAIL NO.: EV335857052US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/998,196 Confirmation No. 4434
Applicant : Shen-Chih et al.
Filed : December 3, 2001
TC/A.U. : 1646
Examiner : Kaufman, Claire M.

Docket No. : 6653-016-999
Customer No. : 20853

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. § 1.10(c) TO ACCORD
U.S.P.S. DEPOSIT DATE AS FILING DATE**

Sir:

On August 18, 2003, in accordance with the Rules of Practice for filing correspondence by "Express Mail" under 37 C.F.R. § 1.10(a), Applicants deposited a Response to Restriction Requirement and related documents (hereinafter, "the deposited correspondence") with the United States Postal Service (U.S.P.S.). Applicants used the U.S.P.S. "Express Mail Post Office to Addressee" service and paid sufficient postage therefor. The Express Mail Label No. was EV335856560US.

The deposited correspondence, a true copy of which, is attached as Exhibit 1 hereto, consisted of the following:

- 1) a return postcard ("Post Card Receipt"), which on one side had an itemized list of the papers mailed on August 18, 2003 and Express Mail Label No. EV335856560US;
- 2) a Response to Restriction Requirement; and
- 3) a Change of Correspondence Address.

It has recently come to the attention of Attorneys for Applicants that the United States Patent and Trademark Office ("USPTO") has returned the Post Card Receipt of the deposited correspondence showing a stamped receipt date of August 19, 2003 instead of August 18, 2003. A true copy of the stamped Post Card Receipt is attached hereto as Exhibit 2.

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OFFICE OF PETITIONS

As a result, Applicants hereby petition the Commissioner under 37 C.F.R. § 1.10(c) to correct the filing date of the deposited correspondence and to accord the correct date of filing in the USPTO as the U.S.P.S. deposit date of August 18, 2003. The facts in support of this petition are provided below.

1. This petition is being filed promptly in accordance with 37 C.F.R. § 1.10(c)(1)

Attorneys for Applicants recently became aware that the USPTO had accorded in error a receipt date of August 19, 2003 of the deposited correspondence. Upon this discovery, Attorneys for Applicants telephoned the USPTO to determine whether there was any record of the correspondence being delivered. The USPTO computer database shows that the deposited correspondence had been received on August 19, 2003.

This petition is therefore being filed promptly after Attorneys for Applicants became aware that the USPTO had erroneously accorded the filing date of August 19, 2003, instead of August 18, 2003, in accordance with 37 C.F.R. § 1.10(c)(1).

2. The Express Mail Mailing Label No. EV335856560US was placed on the deposited correspondence in accordance with 37 C.F.R. § 1.10(c)(2)

As demonstrated by the true copy of the deposited correspondence attached as Exhibit 1, the first page of the Response to Restriction Requirement and the Post Card Receipt itemizing the correspondence contents both included the Express Mail Label No. EV335856560US. As a result, the Express Mail Label No. EV335856560US was placed on the deposited correspondence prior to it being deposited with the U.S.P.S. in accordance with 37 C.F.R. § 1.10(c)(2).

3. The necessary supporting documentation is attached to this petition in accordance with 37 C.F.R. § 1.10(c)(3)

As indicated above, a true copy of the deposited correspondence is attached as Exhibit 1 hereto and demonstrates that the deposited correspondence showed the relevant Express Mail Label No. EV335856560US. In addition, in accordance with 37 C.F.R. § 1.10(c)(3), a true copy of the Post Office to Addressee Express Mail Mailing Label No. EV335856560US is attached hereto as Exhibit 3. In the Date In box, the Express Mail mailing label clearly shows the "date in" as being the requested filing date of August 18, 2003. The Express Mail

mailing label also bears a U.S.P.S. stamp verifying August 18, 2003 as the date of deposit with the U.S.P.S. The mailing label additionally indicates that the sender is Attorneys for Applicants, Pennie & Edmonds LLP, 1155 Avenue of the Americas, New York, NY 10036; that the recipient is the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450; and that sufficient postage of \$62.15 was paid.

Furthermore, a true copy of the Express Mail Certification dated August 18, 2003 and signed by an employee of Attorney for Applicants, Anthony Ali, is attached hereto as Exhibit 4. The Express Mail Certification indicates that the deposited correspondence corresponding to the attorney name "Baldwin AWC" and attorney docket no. "6653-016-999" in the 8th table entry of that document, was inserted into the Express Mail package corresponding to the Express Mail Label No. EV335856560US, and that this package was deposited with the U.S.P.S. using "Express Mail Post Office to Addressee" service on August 18, 2003. Information regarding attorney name and attorney docket number for other correspondences not related to this application has been redacted to preserve the confidentiality of that information in the remaining table entries of the Express Mail Certification.

Accordingly, Applicants respectfully submit that all of the requirements of 37 C.F.R. §§ 1.10(a) and (c) have been fully met and complied with, and that therefore the deposited correspondence in Exhibit 1 – including the Response to Restriction Requirement contained therein – should be accorded a filing date of August 18, 2003, the date of deposit of that correspondence as Express Mail with the U.S.P.S.

It is believed that no fee is required in connection with this petition. However, should the Patent Office determine otherwise, please charge any necessary fee to Pennie & Edmonds LLP deposit account no. 16-1150.

Respectfully submitted,

Date: September 18, 2003



Geraldine F. Baldwin

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(Reg. No.)

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